

Senator Todd Weiler proposes the following substitute bill:

**GAMBLING MACHINES AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to gambling.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies definitions;
- ▶ clarifies that certain gambling offenses include fringe gambling; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-1101**, as last amended by Laws of Utah 2012, Chapters 27 and 157

**76-10-1102**, as last amended by Laws of Utah 2012, Chapter 157

**76-10-1103**, as enacted by Laws of Utah 1973, Chapter 196

**76-10-1104**, as last amended by Laws of Utah 1991, Chapter 241



26 [76-10-1105](#), as enacted by Laws of Utah 1973, Chapter 196



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **76-10-1101** is amended to read:

30 **76-10-1101. Definitions.**

31 As used in this part:

32 (1) "Consumer" means the same as that term is defined in Section [76-10-1230](#).

33 ~~[(H)]~~ (2) (a) "Fringe gambling" means any gambling, lottery, fringe gaming device, or  
34 video gaming device ~~[which is: (i)]~~ that is given, conducted, or offered for use or sale by a  
35 business in exchange for anything of value~~[, or (ii) given away]~~ or incident to the purchase of  
36 ~~[other goods or services]~~ another good or service.

37 (b) "Fringe gambling" does not ~~[mean]~~ include a promotional activity that is clearly  
38 ancillary to the primary activity of a business.

39 ~~[(c) Determination of whether a promotional activity is clearly ancillary under~~  
40 ~~Subsection (1)(b) is by consideration of the totality of the circumstances, which may include~~  
41 ~~one or more of these factors:]~~

42 ~~[(i) the manner in which the business is marketed, advertised, or promoted;]~~

43 ~~[(ii) whether and the degree to which the business provides instructions regarding the~~  
44 ~~use or operation of the promotional activity, as compared to the use or operation of the goods~~  
45 ~~or services sold by the business;]~~

46 ~~[(iii) the availability and terms of any free play option to engage in the promotional~~  
47 ~~activity;]~~

48 ~~[(iv) whether any contest, sweepstakes, or other promotional entries provided to~~  
49 ~~customers who purchase goods or services from the business provide any advantage in winning~~  
50 ~~a prize over any advantage provided to participants in the promotional activity who do not~~  
51 ~~purchase goods or services from the business;]~~

52 ~~[(v) whether the goods or services promoted for purchase by the business are on terms~~  
53 ~~that are commercially reasonable; and]~~

54 ~~[(vi) whether any prize won by participation in the promotion may be parlayed into one~~  
55 ~~or more additional opportunities to win an additional prize.]~~

56 (3) (a) "Fringe gaming device" means a device that provides the user:

57 (i) a card, token, credit, or product in exchange for anything of value; and  
 58 (ii) along with the card, token, credit, or product, the opportunity to participate in a  
 59 contest, game, gaming scheme, or sweepstakes with a potential return of money or something  
 60 of value that is based on an element of chance and not substantially affected by a person's skill,  
 61 knowledge, or dexterity.

62 (b) "Fringe gaming device" does not include a device that:

63 (i) provides the user a card, token, credit, or product in exchange for only the birthdate;  
 64 or

65 (ii) utilizes a mandatory electronic age verification process that:

66 (A) provides a visual warning that notifies the user that use is limited to adults 18 years  
 67 of age or older; and

68 (B) electronically or mechanically requires the user to input a birthdate demonstrating  
 69 that the user is not under 18 years of age before the device can be activated for play; and

70 (iii) provides a visual warning that use of the device is limited to 60 minutes and  
 71 automatically terminates the user's session on the device at the expiration of the time limit.

72 ~~[(2)]~~ (4) (a) "Gambling" means risking anything of value for a return or risking  
 73 anything of value upon the outcome of a contest, game, gaming scheme, or gaming device  
 74 when the return or outcome:

75 (i) is based ~~[upon]~~ on an element of chance, regardless of the existence of a preview or  
 76 pre-reveal feature in the device, contest, or game; and

77 (ii) is in accord with an agreement or understanding that someone will receive  
 78 ~~[something]~~ anything of value in the event of a certain outcome.

79 (b) "Gambling" includes a lottery ~~[and fringe gambling].~~

80 (c) "Gambling" does not include:

81 (i) a lawful business transaction; or

82 (ii) playing an amusement device that confers:

83 (A) only an immediate and unrecorded right of replay not exchangeable for value[-]; or

84 (B) as a reward for playing, a toy or novelty with a value of less than \$10.

85 ~~[(3)]~~ (5) "Gambling bet" means money, checks, credit, or any other representation of  
 86 value.

87 ~~[(4)]~~ (6) "Gambling device or record" means anything specifically designed for use in

88 gambling or fringe gambling or used primarily for gambling or fringe gambling.

89 ~~[(5)]~~ (7) "Gambling proceeds" means anything of value used in gambling or fringe  
90 gambling.

91 ~~[(6)]~~ (8) "Internet gambling" or "online gambling" means gambling, fringe gambling,  
92 or gaming by use of:

93 (a) the Internet; or

94 (b) any mobile electronic device that allows access to data and information.

95 (9) "Internet service provider" means a person engaged in the business of  
96 providing Internet access service, with the intent of making a profit, to consumers in Utah.

97 ~~[(7)]~~ (10) "Lottery" means any scheme for the disposal or distribution of property by  
98 chance among persons who have paid or promised to pay any valuable consideration for the  
99 chance of obtaining property, or portion of it, or for any share or any interest in property, upon  
100 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or  
101 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

102 (11) "Promotional activity that is clearly ancillary to the primary activity of a business"  
103 means that the promotional activity:

104 (a) continues for a limited period of time;

105 (b) is related to a good or service provided by the business or the marketing or  
106 advertisement of a good or service provided by the business;

107 (c) does not require a person to purchase a good or service from the business in  
108 consideration for participation or an advantage in the promotional activity or any other contest,  
109 game, gaming scheme, sweepstakes, or promotional activity; and

110 (d) promotes the good or service being promoted for purchase by the business on terms  
111 that are commercially reasonable.

112 ~~[(8)]~~ (12) "Video gaming device" means any device that possesses all of the following  
113 characteristics:

114 (a) a video display and computer mechanism for playing a game;

115 (b) the length of play of any single game is not substantially affected by the skill,  
116 knowledge, or dexterity of the player;

117 (c) a meter, tracking, or recording mechanism that records or tracks any money, tokens,  
118 games, or credits accumulated or remaining;

119 (d) a play option that permits a player to spend or risk varying amounts of money,  
120 tokens, or credits during a single game, in which the spending or risking of a greater amount of  
121 money, tokens, or credits:

122 (i) does not significantly extend the length of play time of any single game; and

123 (ii) provides for a chance of greater return of credits, games, or money; and

124 (e) an operating mechanism that, in order to function, requires inserting money, tokens,  
125 or other valuable consideration [~~in order to function~~] other than solely the user's name,  
126 birthdate, or contact information.

127 Section 2. Section **76-10-1102** is amended to read:

128 **76-10-1102. Gambling.**

129 (1) A person is guilty of gambling if the person:

130 (a) participates in gambling or fringe gambling, including any Internet or online  
131 gambling;

132 (b) knowingly permits any gambling or fringe gambling to be played, conducted, or  
133 dealt upon or in any real or personal property owned, rented, or under the control of the actor,  
134 whether in whole or in part; or

135 (c) knowingly allows the use of any video gaming device that is:

136 (i) in any business establishment or public place; and

137 (ii) accessible for use by any person within the establishment or public place.

138 (2) Gambling is a class B misdemeanor, except that any person who is convicted two  
139 or more times under this section is guilty of a class A misdemeanor.

140 (3) (a) A person is guilty of a class A misdemeanor who intentionally provides or  
141 offers to provide any form of Internet or online gambling to any person in this state.

142 (b) Subsection (3)(a) does not apply to an Internet service provider [~~or~~], a hosting  
143 company as defined in Section 76-10-1230, a provider of public telecommunications services  
144 as defined in Section 54-8b-2, or an Internet advertising service by reason of the fact that the  
145 Internet service provider, hosting company, Internet advertising service, or provider of public  
146 telecommunications services:

147 (i) transmits, routes, or provides connections for material without selecting the  
148 material; or

149 (ii) stores or delivers the material at the direction of a user.

150 (4) If any federal law is enacted that authorizes Internet gambling in the states and that  
151 federal law provides that individual states may opt out of Internet gambling, this state shall opt  
152 out of Internet gambling in the manner provided by federal law and within the time frame  
153 provided by that law.

154 (5) Whether or not any federal law is enacted that authorizes Internet gambling in the  
155 states, this section acts as this state's prohibition of any gambling, including Internet gambling,  
156 in this state.

157 Section 3. Section **76-10-1103** is amended to read:

158 **76-10-1103. Gambling fraud.**

159 (1) A person is guilty of gambling fraud if ~~[he]~~ the person participates in gambling or  
160 fringe gambling and wins or acquires to himself or herself or another any gambling proceeds  
161 when ~~[he]~~ the person knows ~~[he]~~ the person has a lesser risk of losing or greater chance of  
162 winning than one or more of the other participants, and the risk is not known to all participants.

163 (2) A person convicted of gambling fraud ~~[shall be]~~ is punished as in the case of theft  
164 of property of like value.

165 Section 4. Section **76-10-1104** is amended to read:

166 **76-10-1104. Gambling promotion.**

167 (1) A person is guilty of gambling promotion if ~~[he]~~ the person derives or intends to  
168 derive an economic benefit other than personal winnings from gambling or fringe gambling  
169 and:

170 (a) ~~[he]~~ the person induces or aids another to engage in gambling or fringe gambling;  
171 or

172 (b) ~~[he]~~ the person knowingly invests in, finances, owns, controls, supervises,  
173 manages, or participates in any gambling or fringe gambling.

174 (2) Gambling promotion is a class B misdemeanor, ~~[provided, however]~~ except that  
175 any person who is twice convicted under this section ~~[shall be]~~ is guilty of a ~~[felony of the]~~  
176 third degree felony.

177 Section 5. Section **76-10-1105** is amended to read:

178 **76-10-1105. Possessing a gambling device or record.**

179 (1) A person is guilty of possessing a gambling device or record if ~~[he]~~ the person  
180 knowingly possesses ~~[it with intent to use it]~~ the gambling device or record with intent to use

181 the gambling device or record in gambling or fringe gambling.

182 (2) Possession of a gambling device or record is a class B misdemeanor, [~~provided;~~  
183 ~~however,~~] except that any person who is twice convicted under this section [~~shall be~~] is guilty  
184 of a class A misdemeanor, and [~~any~~] a person who is convicted three or more times under this  
185 section [~~shall be~~] is guilty of a [~~felony of the~~] third degree felony.